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9 UNITED STATES DISTRICT COURT

10 NORTHERN DISTRICT OF CALIFORNIA

11 SAN FRANCISCO DIVISION

12 NEXTDOOR.COM, INC., a Delaware
13 corporation,

14 Plaintiff,

15 vs.

16 RAJ ABHYANKER, an individual,

17 Defendant.

18 RAJ ABHYANKER, an individual

19 Counterclaimant,

20 vs.

21 NEXTDOOR.COM, INC., a Delaware
22 corporation; PRAKASH
23 JANAKIRAMAN, an individual;
24 BENCHMARK CAPITAL PARTNERS,
25 L.P., a Delaware limited partnership;
26 BENCHMARK CAPITAL
27 MANAGEMENT CO. LLC, a Delaware
28 limited liability company; SANDEEP
SOOD, an individual; MONSOON
ENTERPRISES, INC., a California
corporation, and DOES 1–50, inclusive;

Counterdefendants.

Case No. 3:12-cv-05667-EMC

**JOINT REPORT REGARDING PLAN FOR
TRADE SECRET DESIGNATION BY
COUNTERDEFENDANT RAJ
ABHYANKER**

Judge: Honorable Edward M. Chen

1 On June 6, 2013, this Court heard oral argument on Nextdoor.com, Inc.’s, Prakash
2 Janakirman’s, Monsoon Enterprises, Inc.’s, and Sandeep Sood’s (collectively,
3 “Counterdefendants”) motions to dismiss Raj Abhyanker’s counterclaim for trade secret
4 misappropriation. Although the Court denied the motions (except as to the use of the name
5 nextdoor.com, which it concluded could not be a trade secret), it determined that early
6 identification of Mr. Abhyanker’s alleged trade secrets, and the facts underlying his allegations
7 that they were misappropriated and used by Counterdefendants, is appropriate in this case. The
8 Court thus ordered the parties to meet and confer to discuss a process by which such disclosures
9 would be made, and to provide the Court with a joint report on the status of their discussions by
10 June 27, 2013. *See* Dkt. Nos. 95 at 1; 97 at 24, 35. In accordance with the Court’s order, the
11 parties hereby submit the following joint report.

12 As summarized herein, the parties are nearly in agreement as to what Mr. Abhyanker’s
13 disclosure should include, but disagree about its timing and whether the Court has authority to
14 require Mr. Abhyanker to include particular allegations of misappropriation in the trade secret
15 designation (as opposed to identification of the trade secrets themselves). Mr. Abhyanker
16 maintains that the requiring particular allegations of misappropriation in a trade secret designation
17 is contrary to established trade secret law; Counterdefendants maintain that the Court absolutely
18 has the authority to require the disclosure, as a case management device, and that if Mr.
19 Abhyanker cannot or will not provide it, the Court should simply grant the motions to dismiss
20 with leave to add those facts to his counterclaim by amendment.

21 **I. Format of Trade Secret Designation**

22 The parties agree that the trade secret designation should provide the following
23 information for each trade secret asserted by Mr. Abhyanker in his First Amended Counterclaim
24 (with the exception of the name “Nextdoor.com”):

25 1. The identification of the trade secret with reasonable particularity as required by
26 California Code of Civil Procedure Section 2019.210 and the cases interpreting that statutory
27 section.

28 2. For each trade secret, whether the asserted trade secret was acquired by each particular

1 counterdefendant and the supporting factual basis.

2 3. For each trade secret, whether the asserted trade secret was disclosed by each particular
3 counterdefendant and the supporting factual basis.

4 4. For each trade secret, whether the asserted trade secret was used by each particular
5 counterdefendant and the supporting factual basis.

6 The only point of disagreement between the parties regarding the contents of the
7 disclosure relates to the identification of documents.

8 **Counterdefendants' Position:**

9 Counterdefendants believe that the trade secret designation should require Mr. Abhyanker
10 to identify documents evidencing the scope of the trade secret asserted. Identification of these
11 documents will help to define the scope of Mr. Abhyanker's alleged trade secrets in a way that
12 unsupported allegations would not.

13 The format for the disclosure that Counterdefendants have proposed (in chart form, as
14 contemplated by the Court (*see* Dkt. 97 at 24)) is attached hereto as **Exhibit A**.

15 **Mr. Abhyanker's Position:**

16 Mr. Abhyanker does not believe that any supporting documents need to be identified in
17 the trade secret designation, as that is the purpose of discovery, not a trade secret designation.

18 **II. Schedule of Trade Secret Designation**

19 The parties have been unable to agree on a schedule relating to the disclosure.
20 Accordingly, the parties hereby submit their own proposed schedules for the Court's
21 consideration.

22 **A. Raj Abhyanker's Proposed Schedule**

23 As an initial matter, Mr. Abhyanker notes that he requires some time to prepare his trade
24 secret designation, which has been expanded from its traditional contents to require identification
25 of the misappropriation with particularity. In this regard, Mr. Abhyanker is also currently out of
26 the country visiting his aunt who raised him and who is in dire medical condition in the intensive
27 care unit in a hospital in India. In addition, after reviewing California case law governing trade
28 secret cases and trade secret designations pursuant to California Code of Civil Procedure

Section 2019.210, Mr. Abhyanker believes that requiring him allege with particularity the acts of misappropriation is improper. Trade secret designations relate only to the identification of trade secrets with particularity, not acts of misappropriation. The law is clear that a trade secret plaintiff should be allowed to conduct discovery regarding the misappropriation element. Accordingly, Mr. Abhyanker intends to file a request for reconsideration and respectfully requests an opportunity to fully brief this issue or, alternatively, requests that this Court certify the issue for appeal to the Ninth Circuit.

With this in mind, Mr. Abhyanker proposes the following schedule:

Parties to Negotiate and File Stipulated Protective Order	July 5, 2013
Abhyanker to file request for motion for leave to file a motion for reconsideration re misappropriation allegations being included in trade secret designation	July 15, 2013
Abhyanker to file and serve motion requesting court to certify for interlocutory appeal	14 days after either denial of motion for leave to file motion for reconsideration or denial of motion for reconsideration
Abhyanker to file and serve trade secret designation	14 days after denial of motion requesting court to certify for interlocutory appeal or of affirmance on appeal
Parties to meet and confer regarding any issues relating to the sufficiency of the trade secret designation	Within 10 days of filing and service of trade secret designation
Parties to prepare joint letter to Judge if unable to resolve dispute through meet and confer	Within 7 days of meeting and conferring

B. Counterdefendants' Proposed Schedule

Counterdefendants believe that the Court's June 6, 2013 order regarding Abhyanker's

1 trade secret disclosures is a sound case management device and that Abhyanker should not be
2 granted leave to file any motion for reconsideration pursuant to Civil Local Rule 7-9, nor should
3 the issue be certified for interlocutory appeal. The Northern District of California recognizes that
4 Cal. Code of Civ. P. § 2019.210 has a role to play in federal court, not just as a prerequisite to
5 trade secret discovery, but as a flexible case management device. *See Interserve Inc. v. Fusion*
6 *Garage PTE, Ltd.*, 2010 WL 10445553, at *3 (N.D. Cal. Apr. 9, 2010) (requiring
7 Section 2019.210 disclosures, regardless of their applicability under the *Erie* doctrine, as a case
8 management tool).

9 Moreover, courts in this District have long adopted and applied standing orders requiring
10 specific disclosures of the facts supporting a plaintiff's claims in cases brought under the RICO
11 statute as a case management tool. *See, e.g., Petrochem Insulation, Inc. v. Northern California*
12 *and Northern Nevada Pipe Trades Council*, 1992 WL 131162, at *4-*5 (N.D. Cal. Mar. 19, 1992)
13 (dismissing plaintiff's complaint for failure to comply with the court's RICO standing order
14 requiring a separate identification of, *inter alia*, the alleged injury to business or property, the
15 direct casual relationship between the alleged injury and the violation of the RICO statute, and a
16 list of damages sustained indicating the amount for which each defendant is allegedly liable).
17 The Ninth Circuit has affirmed the validity of using these types of orders to require a plaintiff to
18 come forward with specific factual allegations supporting the elements of its claims. *Wagh v.*
19 *Metris Direct, Inc.*, 348 F.3d 1102, 1107-09 (9th Cir. 2003) (overruled on other grounds by *Odom*
20 *v. Microsoft, Inc.*, 486 F.3d 541 (9th Cir. 2006)).

21 Furthermore, there is no basis for reconsideration. There is no material difference in fact
22 or law than what was presented to the Court at the hearing, there has been no intervening change
23 in fact or law, and the Court did not fail to consider any material facts or dispositive legal
24 arguments presented. *See* Civil L.R. 7-9(b). An interlocutory appeal likewise would be
25 inappropriate. This is not (1) a controlling question of law that could materially affect the
26 outcome of this litigation, (2) there is not substantial ground for difference of opinion that the
27 Court can order the disclosure contemplated by the June 6 order as a case management device,
28 and (3) certifying an appeal would in no way advance the ultimate termination of this case—it

would only delay it for months. *See* 28 U.S.C. § 1292(b).¹

Counterdefendants thus maintain that the disclosure ordered by the Court is entirely appropriate, and in the interest of keeping this case moving, propose the schedule below.

Parties to Negotiate and File Stipulated Protective Order	July 5, 2013
Abhyanker to file (under seal) his identification of trade secrets, factual basis for claims of misappropriation, and documentary support in the form of the chart attached hereto as Exhibit A	July 19, 2013
Parties to meet and confer regarding any issues relating to the sufficiency of the trade secret designation	August 2, 2013
Parties to address any disagreements relating to the sufficiency of the trade secret designation in their respective portions of the CMC Statement	August 15, 2013
Case Management Conference	August 22, 2013

Counterdefendants believe this schedule provides Abhyanker sufficient time to prepare his disclosures and will likewise help to move this case forward. It has already been three weeks since the Court's June 6, 2013 order contemplating such a disclosure. The schedule proposed by Counterdefendants would provide Abhyanker an additional three weeks to prepare these disclosures, and will allow for the resolution of any issues with these disclosures at or prior to the scheduled August 22, 2013 case management conference, as contemplated by the Court. *See* Dkt. 97 at 34 ("I'd like to come back in and meet soon after we've had [the disclosure], see whether we can talk about whether the next step is a motion, next step is some limited discovery, or what we're going to do in that regard. So I'd like for you to meet and confer and figure out something

¹ In any event, if the Court is inclined to entertain any such request, Mr. Abhyanker should have to do so with a motion, as contemplated by this Court's Civil Local Rules. *See* Civil L.R. 7-1.

1 that's going to happen to us in the next 30 to 60 days and then come back here.'').

2 Mr. Abhyanker's steadfast resistance to making the disclosures contemplated by the Court
3 strongly suggests he never had the required Rule 11 basis to make the sweeping allegations of
4 misappropriation offered by his Counterclaim and First Amended Counterclaim—and indeed,
5 throughout the last 18 months of litigation against Nextdoor.com, its founders, investors, and
6 friends. If Abhyanker does not wish to proceed in this manner, Counterdefendants believe that
7 the appropriate approach is for the Court to grant Counterdefendants' respective motions to
8 dismiss, and order Abhyanker to actually plead the facts of misappropriation. The Court's
9 constructive effort of avoiding amendment was premised on Mr. Abhyanker being able to come
10 forward with facts in this process, and if he cannot or will not, then the First Amended Complaint
11 should simply be dismissed with leave to add facts by amendment.

12
13 Dated: June 27, 2013

Respectfully submitted,

14 LEGALFORCE RAJ ABHYANKER, P.C.

15
16 By /s/ Bruno W. Tarabichi

17 Bruno W. Tarabichi
18 Roy Montgomery
Kuscha Hatami
Attorneys for Raj Abhyanker

19
20
21 Dated: June 27, 2013

Respectfully submitted,

22 FENWICK & WEST LLP

23
24 By /s/ Jennifer L. Kelly

25 Laurence F. Pulgram
26 Jennifer L. Kelly
27 Attorneys for Nextdoor.com and Prakash
28 Janakirman

1 Dated: June 27, 2013

Respectfully submitted,

2 ROYCE LAW FIRM, P.C.

3
4 By /s/ Harpreet S. Walia

5 Harpreet S. Walia

6 Attorneys for Monsoon Enterprises and

7 Sandeep Sood

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ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1

I, Jennifer L. Kelly, am the ECF User whose identification and password are being used to file this **JOINT REPORT REGARDING PLAN FOR TRADE SECRET DESIGNATION.**

In compliance with Civil Local Rule 5-1, I hereby attest that all signatories have concurred in this filing.

Dated: June 27, 2013

/s/ Jennifer L. Kelly
Jennifer L. Kelly